IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 813

ANNIE MARY TIMMONS, *Appellant*,

v.

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION AND DANIEL R. MCLEOD, as Attorney General of the State of South Carolina, *Appellees*.

On Appeal From the Supreme Court of South Carolina

BRIEF OPPOSING MOTION TO DISMISS

THE FEDERAL CONSTITUTIONAL QUESTIONS ARE SUBSTANTIAL.

Appellants contends, and appellees admit, that United States Treasury funds are used in payment for the condemnation properties, (Mot. Dism. p. 6) which appellant further contends, raises a federal question and violates her guaranteed constitutional rights, without due process.

Where the United States constitution is interpreted by this Honorable Court, relative to the claimed power by a State of eminent domain, pursuant to payments with United States Treasury funds, certain basic rules

of law are followed, and the constitution must be considered and respected, as superior to the State, whose legislative and Court opinions are limited and inferior, and this Court has jurisdiction of such federal issues. It is clear here that the Federal constitutional questions are substantial and moreover the cases cited by the appellees, in their motion to dismiss, (Mot. Dism. p. 9 & 10), even reinforces appellant's contention and supports the substantiality of the constitutional questions. Appellees cite no case which is relevant or pertinent to the issues before The Court and which is in support of its contention. Appellees do quote, out of context from a dissent by Justice Holmes, in a majority opinion by Justice Harlan in *Madisonville Traction Co.* 196 U.S. 239, 49 L. ed 462, 25 S. Ct. 251, (Mot. Dism. p. 10 & 11), which involves an appeal from the Circuit Court of the United States, for Western District of Kentucky, to review a decree enjoining a further prosecution in the County Court of Hopkins County, of a condemnation proceeding, and the removal of the case to a Federal Circuit Court for a diversity of citizenship and in a majority opinion by Justice Harlan, affirmed the decree of the Federal Circuit Court awarding the injunction. The Federal Court, would enforce the State law, unless the law authorized the appropriation of private property for purposes that were really not of a public nature, and jurisdiction of the United States rests here on federal agency funds, a federal issue, and diversity of citizenship, also of a citizen of a State, as the Supreme Law of the land's, judicial power. The majority opinion in *Madisonville, supra,* reinforces and supports appellant's position and certainly is not in point or authority for appellees' contention. For the same results, appellees cite *Louisiana Power* v. *City of Thibo-*

daux, 79 S. Ct. 1070, 360 U.S. 25, 3 L. ed. 1058, (Mot. Dism. p. 10), a case involving questions of Stay Order, discretion, and justification for federal jurisdiction, in eminent domain proceedings. This Court's attention is respectfully invited to the separate opinion by Justice Brennan, Chief Justice Warren and Justice Douglas in support of the appellant's position, when questions of State law are not cloudy, a Federal District Court should decide them, even if such a course necessitates a decision of a federal constitutional issue. Likewise consider Justice Stewart, separate opinion, the cases are legion, since *Erie R. Co.* v. *Tompkins,* 304 U.S. 64, 82 Law. ed. 1188, 58 S. Ct. 817, in which the Federal Courts have adjudicated diversity cases by deciding issues of State Law, difficult and easy. And this Court has many times, often over dissents, urging abstention, decided doubtful questions of State Law, properly before us. Cases cited therein. Article 3 paragraph 3 Constitution of the United States. Appellant respectfully submits this case reinforces her position, and is contrary and inconsistent with appellees reasons for citation.

Again the appellees quotes out of context, and not the law of the case, in *Brinkeroff-Faris Trust & Savings Co.* v. *Hill,* 50 S. Ct. 451, 281 U.S. 673, 74 L. ed. 1107 (Mot. Dism. p. 10), in which Justice Brendeis' opinion supports and reinforces appellant's case on appeal for jurisdiction, the power of the Supreme Court of United States to review decisions of the state courts is limited to their decisions of Federal questions, * * * but State may not deprive a person of all existing remedies, for the enforcement of a right, which the state has no power to destroy without opportunity to protect it. Federal question raised in petition for rehearing in highest Court of State is raised in time.

Rule 16.1.(b) (Mot. Dism. p. 5) The appellant also raised her federal questions in the State Supreme Court. What Justice Brandeis did say in effect was, a violation of due process extends to State action through its judicial, as well as through its legislative, executive or administrative branch of government. And the violation is none the less clear when that result is accomplished by State judiciary in the course of construing an otherwise valid State statute. The Federal guaranty of due process extends to State Action in its judicial, and its legislative, to review federal questions. Appellant respectfully contends that this federal guaranty of due process, gives her jurisdiction in this Court to protect her personal and property rights, heretofore denied her, in lower state courts involving federal questions and federal funds. Moreover, the special class discriminatory act applied to the appellant exclusively, is today repugnant to the United States Constitution in this appeal, and this is one of many federal rights herein violated. Thus the case of *Cramp* v. *Board of Public Instructions of Orange County Florida,* 82 S. Ct. 275, 368 U.S. 278, 7 L. ed. 2nd 285, affords another illustration of appellees' citation of a case not in point but reinforces the appellant's appeal case. (Mot. Dism. p. 10) Justice Stewart in passing on an appeal involving a Florida statute requiring teachers to take an oath not to aid or support the communist party, etc. was attacked by a teacher as being unconstitutional, but Circuit Court of Orange County, held statute valid and prayer for injunction was denied by the Supreme Court of Florida. The case was appealed to this Court and in an unanimous opinion by Justice Stewart, it was held (1) teacher could execute oath without fear of perjury, but teacher could attack the statute in State Court and in United States Supreme Court and (2)

statute was unconstitutional and in violation of and denial of due process of law.

Also, in addition, it was discriminatory, repugnant, to guaranty of liberty and the 14th amendment. Also see Fifth amendment, which applies to and supports the appellant's appeal. The Federal Courts protect State and Federal employees and its citizens, in case of a discriminatory state statute, and the *Cramp* case, supra, was thus reversed by the Supreme Court of the United States, and the Florida Statute held unconstitutional, and this Court had jurisdiction on appeal.

The appellees again with misapplication refers to the appellant's petition for a writ of certiorari to the Fourth Circuit Court of appeals, No. 518, which involved, as appellees stated only the question of removal to the federal courts, but the appellant's petition there was not timely and the jurisdictional procedures were not complied with under the federal statutes involved, and the appellant's present counsel on appeal here, was not of record in those state or district court proceedings. Certainly the record on appeal proves this appeal, an entirely different case as stated in the Jurisdictional Statement before this Court at present. (Mot. Dism. p. 10). Moreover the arguments and federal constitutional questions presented on appeal proves appellant is entitled to jurisdiction and a hearing by this court on the merits of the case. What could present more of a federal question to this Court than United States Treasury money appropriated by The Congress to HUD, under contract with a State agency being disbursed in noncompliance and violation of said contract, in taking of appellant's properties, without due process, involving substantial federal ques-

tions, no permanent or public use of appellant's properties as condemned, during 1970 the expiration date of the Celebration? Federal money, what could be more of a federal question when diverted or used as appellees admits in this appeal? (Mit. Dism. 5 & 6)

Moreover, there is a diversity of citizenship, by the Appellant, the appellees, HUD officials of Atlanta, Ga. Washington, D. C. Secretary of HUD, and State of South Carolina, and SCT Commission an invalid creative involved State agency. Appendix C. Appellant's Jurisdictional statement. And appellees Motion to Dismiss.

By appellees admission, throughout its motion to dismiss, the Federal money from Washington, D. C. disbursed therefrom, and applied for by appellees, and to be used by appellees in this condemnation proceeding, without compliance, pursuant to the contract, is the very inception, and basis of the federal substantial constitutional question, which gives this Honorable Court jurisdiction on the merits for argument. Appellees Mot. Dism. and appellant juris. Statement.

Appellees in their motion to dismiss appeal, on pages 4, 7 and 12 thereof, refers to the appellant's property as, (1) buildings which had been built as dormitories for a women's college, and (2) that appellant did not want to part with her property, because of the low value placed thereon for condemnation purposes. Appellant contends that this is not altogether true, and only part of the facts, because the property she owns was until 1930 occupied by the Chicora College for Women, when it became merged with another presbyterian school, Queens College, at Charlotte, North Carolina. The property is within the same block area of,

Presbyterian Theological school, founded 1831 under the Presbyterian Synod of South Carolina and Georgia removed to Decatur, Georgia in 1925, where Woodrow Wilson, once a student, and where his father and uncle taught, he at that time was known as Tommy Wilson, after became President of the United States, President of Princeton University. The point is appellant contends, that she had consummated plans to place her property in trust with a commission to preserve forever in perpetuity and to restore to its original foundation and buildings and beauty and culture, all buildings intact as they are now, as a historical site and learning. For judicial notice and information of the Court, please note the accompanying photos of 3 of the 5 buildings, one of the auditorium of Chicaora College for women a presbyterian school until 1930 merger.

The value appellee guesses, on appeallant's properties (Mot. Dism. p. 7) is a gross misstatement of fact, obviously as the photos and buildings speak for itself, and because there has been no federal trial and determination where federal money is involved and where due process has been denied.

In reply to appellee's statement on pages 5 and 7 (Mot. Dism.) concerning the trial judge's orders of August 21 and 27, 1970, involving lack of service and notice, appellant had a stroke in July 4, 1970 and was later entered and under medical treatment in Winston Salem, N. C. at the Baptist Hospital there.

In this connection, the Court's attention is invited to the recent Order of the trial Judge, dated November 4, 1970, with Doctor's certificate of the Baptist Hospital of Winston Salem, N. C. attached thereto, which order among other things, confirms appellant absence

from South Carolina due to illiness and extends the sale of appellant's personal property to November 16, 1970. Appellant's Appendix A. Real property, building are intact.,

Appellant respectfully request that since her Jurisdictional Statement was filed with the Court on or about October 10, 1970, the appellees filed a Motion to Dismiss Appeal on or about October 28, 1970, and the Appellant now files her Brief in Opposition to Dismiss on or about November 12, 1970, and pursuant to the aforestated, that the Honorable Court now give further consideration and ask for a Stay to be issued, directed to the trial judge, of the Court of Common pleas for Richland County to enjoin the execution of the destruction of said buildings of appellant, pending the disposition of this appeal on its merits, and to consider and pass on the substantial federal questions involved with federal funds and the United States Constitution violations with denial of due process of law.

Pursuant to Rule 16 of this Court the appellant respectfully request that the Court enter an appropriate Order for Jurisdiction or in the alternate that, such Order note probable jurisdiction, or postpones consideration of the question of jurisdiction to the hearing of the case on the merits, and that the case stand for argument, until the truth and facts are determined by the Honorable Court.

CONCLUSION

The appellees has failed to cite any authority in point which disposes of the important and substantial federal constitutional question presented by this appeal, and supported by the appellant's jurisdictional statement.

The appellees motion to dismiss the appeal should be denied.

Respectfully submitted,

GERARD HARTZOG
714 Southern Building
Washington, D. C.
Counsel for Appellant

APPENDIX

APPENDIX

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Docket No. 3642
Judgment Roll 74394

(1)

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Petitioners,*

vs.

ANNIE MARY TIMMONS and HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, *Respondents,*

(2)

Docket No. 3650

ANNIE MARY TIMMONS, *Plaintiff,*

vs.

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Defendants.*

Order

A public auction sale of all personal property in premises at 1620 Laurel Street was directed by this Court on Monday, November 2, 1970. Title to the real estate in which the personalty was located was vested in The Tenth South Carolina Tricentennial Commission on August 27, and the former owner (Annie Mary Timmons) was given 30 days within which to surrender possession and remove all personal property from the five buildings located on the premises.

Miss Timmons, so the Court is advised, has not been available in Columbia since mid-August, but the order of August 27 was served by publication and was posted on the premises. That she had knowledge of the order is attested by the fact that her counsel referred to this order in a Jurisdictional Statement filed with the Supreme Court of The United States on October 7.

Miss Timmons has asked counsel for The Tricentennial Commission to delay the sale of the personal property of herself and her sister, Flora Timmons Henry Plumer, until November 15. I have read a medical report on Miss Timmons' physical condition and various telegrams sent by her counsel, Mrs. Plumer and Miss Timmons. Upon the motion of the attorney for The Tricentennial, I directed that the sale be delayed for a period of two weeks to permit the removal of all personal property of Miss Timmons and any and all other persons from said premises.

My order of August 27 gave Miss Timmons 30 days within which to surrender possession of the tract of land which had been acquired by The South Carolina Tricentennial Commission under eminent domain proceedings. This was the maximum period prescribed by the statutory procedure. When it developed that none of the furnishings and personalty had been removed from the buildings during said period the Commission's counsel concluded that the storage of these furnishings as allowed in my order would have been uneconomic.

Thereafter I issued the order directing the sale of personalty not removed from the premises on November 2. The Court is advised that all tenants have vacated the premises and presumably removed their personal property therefrom.

The Tricentennial Commission had no control of the premises during the 30-day period for surrender of the same, and the buildings are still intact. The security of

this property is not now and has never been the responsibility of The Tricentennial Commission.

Upon the motion of the attorney for the Commission acting upon the requests of Miss Timmons, her counsel and her sister and a letter from her physician (all of which are attached to this order for the record in this matter),

IT IS ORDERED:

1. That the sale of personal property in the buildings at 1620 Laurel Street previously set by order of October 3 is delayed from Monday, November 2, at 11 a.m. to Monday, November 16, at 11 a.m. at said premises under the terms of my prior order and the Notice of Sale which has been published in the State on October 14, 21 and 28, 1970; affidavit as to which is attached.

2. That no further advertisement of said sale is necessary or required.

3. That Annie Mary Timmons, Flora Timmons Henry Plumer, all persons acting under them and all persons having property at said premises are given the period until Sunday, November 15 to remove any and all furnishings and personal property from said premises. All property not removed shall be considered as having been abandoned and forfeited.

4. That all such personal property as remains in said buildings be sold at public auction at said premises on Monday, November 16, at 11 a.m.

JOHN GIMBALL
John Grimball, *Resident Judge*
Fifth Judicial Circuit

Columbia, South Carolina
November 3rd, 1970.

NORTH CAROLINA BAPTIST HOSPITALS, INC.
WINSTON-SALEM, NORTH CAROLINA 27103

Phone 725-7251

October 20, 1970

Mr. Gerard Hartzog
Attorney and Counselor at Law
714 Southern Building
Washington, D. C.

Re: Annie Mae Timmons
Hospital No 51 63 20

Dear Mr. Hartzog:

The above captioned patient was seen in the General Medical Clinic of the North Carolina Baptist Hospital on October 16, 1970, on a follow-up visit. The patient was first seen in the clinic on October 9, 1970, at which time she underwent a complete history and physical examination.

It was the examining physician's impression that the patient had hypertension of undetermined etiology, and appropriate studies were ordered to determine the cause. The possibility of hypertensive encephalopathy, transient ischemic attacks (cerebrovascular accident), labrinthitis was raised. It was also felt that the patient suffers from generalized, moderately severe atherosclerotic vascular disease, chronic bronchitis, and hiatal hernia.

She was also seen in the Emergency Room of this institution on 9/17/70, complaining of dizziness. It was the examining physician's impression that the patient was having symptoms secondary to hypertension, and Phenobarbital was prescribed. Arrangements were made at that time for the patient to be further evaluated in the clinic.

At the present time she is undergoing a diagnostic work-up to ascertain the possible cause of her elevated blood pressure.

Because of the patient's symptoms of dizziness and headache, it is my professional opinion that this patient is not medically capable of undergoing a stressful proceeding.

Very sincerely yours,

AMON L. FUNDERBURK
Amon L. Funderburk, M.D.
Resident in Internal Medicine
North Carolina Baptist Hospital

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